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April 29, 2016

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OFFICE OF GENERAL
COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION

2016 MAY 16 AM 8:45

Re: MUR 7018: Carlos Lopez-Cantera for Senate Response to Complaint

Dear Mr. Jordan:

We are writing this letter on behalf of Carlos Lopez-Cantera for Senate ("CFS" or the "Campaign"), and Paul Kilgore, in his official capacity as Treasurer, in response to the Complaint filed in the above-referenced matter by the American Democracy Legal Fund ("ADLF"). The Complaint is just the latest edition in a long line of frivolous, politically-charged complaints filed by ADLF. The Complaint offers nothing more than the same unsupported and hyperbolic allegations and innuendo that have riddled all of ADLF's complaints this election cycle—all against conservative and Republican candidates and organizations. It should be promptly dismissed.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). See 11 CFR § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.*

The Complaint erroneously alleges that the respondents in this matter "appear to have engaged in or will soon be engaging in illegal coordination through the use of a common vendor." Considering its abysmal record in targeting and articulating actual violations of the Act based on past conduct with the Commission, it now appears that ADLF is taking to the crystal

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ball to allege violations of contrived future conduct. Such bogus speculation has no place before the Commission and should be dismissed on its face.

Factual Background

Carlos Lopez-Cantera is a candidate for the U.S. Senate in Florida. He filed his Statement of Candidacy with the Commission on July 22, 2015. His principal campaign committee, Carlos Lopez-Cantera for Senate, filed its Statement of Organization the same day. Rick Wilson was an independent contractor to the Campaign in mid to late-2015, and was paid by the Campaign through his consulting firm, Intrepid Media. The Campaign made two small disbursements to Intrepid Media on August 11, 2015 and September 2, 2015, both of which are reflected on CFS's 2015 October Quarterly Report. Mr. Wilson officially ceased providing consulting services to the Campaign effective December 1, 2015.

Legal Analysis

Under the Commission's regulations, a public communication is deemed to be coordinated, and constitutes an in-kind contribution, when (1) the communication is paid for by someone other than the candidate, the candidate's authorized committee, or an agent of either; (2) the communication satisfies at least one of the content standards set forth at 11 CFR § 109.21(c); and, (3) the communication satisfies at least one of the conduct standards set forth at 11 CFR § 109.21(d). A communication must satisfy each prong of the three-prong test in order for it to be deemed coordinated.

In making its bogus allegations, ADLF focuses exclusively on the conduct prong of the coordination test, stating that CFS and Reform Washington, an independent expenditure-only committee, "appear to have engaged in or will soon be engaging in illegal coordination through the use of a common vendor," referring to Intrepid Media. As an initial matter, Intrepid Media was never a common vendor of the Campaign and Reform Washington. The Campaign severed ties with Rick Wilson and Intrepid Media on December 1, 2015. Intrepid Media only began providing consulting services to Reform Washington after the Campaign issued a notice of termination to Mr. Wilson.

Moreover, aside from ADLF's assertions being rooted in pure conjecture, they wholly ignore the other two prongs of the coordination test—payment and content. Instead of pointing to actual evidence, ADLF conveniently concludes that "respondents will imminently satisfy the paid-for and content prongs of the coordinated communications test," as if these conclusions have evidentiary or factual value. In reality, according to its publicly available reports filed with the Commission, Reform Washington has not paid for or produced a single public communication that expressly advocates for or against any candidate, let alone Carlos Lopez-Cantera. It strains credibility for ADLF to affirmatively conclude that CFS has engaged in coordinated communications with Reform Washington when there have not been any Reform Washington public communications in the first place. Without any Reform Washington public communications, ADLF's charges fail on their face because both the payment and content

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prongs are not satisfied. Based on these facts alone, the Commission's analysis need not extend any further and the Complaint should be immediately dismissed.

Should Reform Washington choose to pay for independent expenditures expressly advocating for Carlos Lopez-Cantera or opposing his opponents in the future, and if Intrepid Media and Mr. Wilson assist in that regard, such communications would not be deemed coordinated by virtue of Intrepid and Mr. Wilson's prior consulting services for the Campaign in 2015, because they would be publicly distributed well beyond the 120-day "cooling off" period for "former employees and independent contractors." See 11 CFR § 109.21(d)(5)(i). The Commission has made clear that this "120-day period starts on the last day of an individual's employment with a candidate or political party committee, or on the last day when a commercial vendor performed any of the services listed in 11 CFR 109.21(d)(4)(ii) for a candidate." Coordinated Communications, Explanation and Justification, 71 Fed. Reg. 33,190, 33,204 (2006).

In this case, Mr. Wilson and Intrepid Media ceased providing services to CFS on December 1, 2015, which means that their 120-day cooling off period was complete on March 29, 2016. Therefore, any independent expenditures paid for and produced by Reform Washington in support of Carlos Lopez-Cantera, with Mr. Wilson's assistance, after this date would not be considered to be coordinated with the Campaign under a common vendor or former independent contractor legal theory.

In presenting politically-motivated and factually and legally unsubstantiated arguments, ADLF has failed to demonstrate that CFS has violated any provision of the Act or the Commission's regulations. Instead, ADLF has yet again invoked an administrative process as a means to continue its thinly veiled assault on its political opponents. The Complaint is based on malicious speculation and innuendo. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your prompt consideration of these matters, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



Charles R. Spies
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Counsel to Carlos Lopez-Cantera for Senate

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